



How to enter a caveat

A guide for people who want to challenge an application for grant on an estate

What is the Probate Service?

The Probate Service is part of HM Courts & Tribunals Service. It administers the system of probate, which gives people the legal right to handle the estate (for example, money, possessions and property) of a deceased person.

This leaflet is to advise you if you want to enter a caveat when someone applies for probate.

If you have any queries, please contact your local probate registry. The staff are there to help you – but they cannot give you legal advice.

Introduction

When a person dies, they usually leave an estate (including money, possessions and property) and sometimes a will.

A will may name one or more **executors** to be responsible for collecting in all the money, paying any debts and distributing any legacies left to individuals or organisations.

In order to access the estate, the executor, or if there is no will the relatives of the deceased need to apply to the Probate Service for a document called a Grant of Representation or 'grant'. This process is called probate.

In most cases, applying for probate is a straightforward procedure. The Probate Service administers applications for grants throughout England and Wales.

If you have concerns about whether someone who applies for a grant has the right to do so and you want to ask a court (not the probate registry) to consider the matter, you can enter a caveat to temporarily stop the grant being issued. You are then called the caveator.

Why and when are caveats used?

A caveat is a way of preventing grant from being issued.

Caveats are often used to create a 'breathing space' when someone has a legal question about a will or a probate applicant. This gives the caveator time to check if there are grounds to oppose an application for a grant.

For example, you could be concerned that:

- the will may not be legal – for example, is it the deceased person's last will? Was the deceased 'of sound mind' (mentally competent) when it was made? Was it properly signed and witnessed? Has it been tampered with? Did the deceased re-marry or enter into a legal civil partnership after the will was made?
- the person intending to apply for a grant may not be entitled to do so; or
- there may be a dispute between people equally entitled to apply for a grant.

Who can enter a caveat?

Anyone over 18 can enter a caveat. If you enter it yourself, you must have an address in England or Wales, or be represented by a solicitor in England or Wales.

You must be able to show that you have one of the following interests in the will:

- an interest – in other words, you are entitled to share in the estate;
- a contrary interest – in other words, you have a different interest from the applicant for a grant.

You cannot enter a caveat jointly with anyone else – anyone who wants to enter a caveat must do so separately.

Can the Probate Service advise me whether to enter a caveat?

No. Probate Service staff cannot give advice about whether you should enter a caveat, or what you should do next. They can only explain what legal options are available to you. If you are in any doubt or need any advice, we recommend you consult a solicitor.

If you **only** want to know when a grant has been issued or you need a copy of the grant, you should ask the Probate Registry to carry out a standing search instead, in order to provide you with a copy of the grant when it is issued. More information is available in leaflet **PA10 'How to enter a standing search'**.

How do I enter a caveat?

You can do this yourself or through a solicitor. If you are doing it yourself, you need to write to or visit any Probate Registry – you cannot enter a caveat by phone, fax or email. You can find addresses of regional Probate Registries on our website – the website address is at the back of this leaflet, or in the **PA4** leaflet enclosed.

The service costs £20 and cheques should be made payable to 'HM Courts & Tribunals Service'.

What information do I need to enter a caveat?

Whether you visit or write to the Probate Service, you will need to complete form **PA8A**. This sets out:

- a formal written request for a caveat to be entered, signed by you or your solicitor;
- full details about the deceased person, as recorded in their death certificate; and
- the last permanent address of the deceased person.
- your name and address; and the name and address of any solicitors acting for you.

You can also enter a caveat by letter, stating the details listed above.

Please note that you must provide the information exactly as it is recorded on the death certificate.

Any discrepancies in names or dates will make the caveat ineffective.

What if I cannot obtain the information from the death certificate in time?

It may be that the death has not been registered or has been registered abroad. In these circumstances, we will normally accept the information you give us.

You must try to ensure that the first and last names of the deceased person in any information you give us are identical to those in the application for probate. You should also try to ensure that the date of death given in your caveat is within three days of the date of death given in the application.

Can I change any details in the caveat after it is entered?

Yes. You can do this at any time – but ideally, before any warning is issued or probate action is started. (These terms are explained later.) You should write to the Probate Registry where you lodged your application and confirm any changes, as soon as you realise you need to change anything.

When should the caveat be entered?

Once you decide you want to enter a caveat, you should do so immediately. Don't wait until you think someone has made an application for grant or is about to apply.

What happens after I've entered a caveat?

We will send you a confirmation note which includes details of the caveat you have entered, including a caveat number. If an application has been made we will also inform the applicant that you have entered a caveat and their application for a grant of representation will be put on hold.

The applicant may now issue a warning against you. You must respond in writing, setting out why a grant should not be issued and your reasons for opposing the application the applicant has made. This is called entering an appearance.

If the dispute is between persons equally entitled to apply you must lodge a summons for directions. You will need legal advice to decide how to respond to a warning.

If you fail to respond within the time stated on the warning, the applicant can apply to have your caveat removed by the court.

If the court accepts your appearance, it is called an accepted appearance. Your caveat will then remain in force indefinitely until matters are resolved. If your summons for directions is accepted a hearing will be arranged.

Bear in mind that if you enter an appearance or a Summons for Directions you may have to pay not only your own legal fees but those of the person making the application for a grant.

We recommend you seek professional legal guidance on this from a Citizens' Advice Bureau, a law centre or a solicitor.

What happens after I've entered an appearance?

If the probate applicant has issued a warning against you and you have entered an appearance which is accepted, either of you may now take matters further through the courts.

To find out the appropriate next step for you, you will need to consult a solicitor, a law centre or a Citizen's Advice Bureau.

Can I cancel the caveat?

Yes. You can withdraw it at any time, providing an appearance has not been entered.

If you cancel your caveat, you will need to write to the probate registry you originally contacted and return the acknowledgement letter you were sent when the caveat was entered.

If, however, an appearance has been entered, the caveat can only be withdrawn by order of a District Probate Registrar.

How long does a caveat last?

A caveat can last up to six months from the date when it is entered. In the month before it is due to expire, you may apply to extend it for a further six months. There is a £20 fee for this.

Will the Probate Service send out a reminder to extend my caveat?

No. If you do not extend the caveat, it will expire. You can then enter a new one.

Useful contacts

For general guidance on wills and probate:

www.directgov.uk/en/RightsandResponsibilities/Death/Preparation/index.htm

For information about the Probate Service and online forms:

<http://www.hmcourts-service.gov.uk/infoabout/civil/probate/index.htm>

To find out addresses of regional probate registries:

<http://www.hmcourts-service.gov.uk/infoabout/civil/probate/registries.htm>

Probate forms and leaflets

- PA1 Probate application form
- PA1A Probate application form (guidance notes)
- PA2 How to obtain probate (leaflet)
- PA3 Probate fees list (leaflet)
- PA4 Directory of probate registries and interview venues (leaflet)
- PA5 Do I need a grant of representation (probate or letters of administration)? (leaflet)
- PA6 What will happen at my probate interview? (leaflet)
- PA7 How to deposit a will with the Probate Service (leaflet)
- PA7A Withdrawing your will from the Principal Probate Registry (form)
- PA8 How to enter a caveat (leaflet)
- PA8A How to enter a caveat (form)
- PA9 How to enter a general search (leaflet)
- PA10 How to enter a standing search (leaflet)
- PA1S Application for a probate search (form)